

1-1 By: Smith of Tarrant (Senate Sponsor - West) H.B. No. 3148
1-2 (In the Senate - Received from the House May 7, 2009;
1-3 May 8, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3148 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to exempting certain young persons who are convicted of an
1-11 offense involving consensual sex from the requirement of
1-12 registering as a sex offender in this state.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 42.017, Code of Criminal Procedure, is
1-15 amended to read as follows:

1-16 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the
1-17 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or
1-18 43.25, Penal Code, the judge shall make an affirmative finding of
1-19 fact and enter the affirmative finding in the judgment in the case
1-20 if the judge determines that:

1-21 (1) at the time of the offense, the defendant was not
1-22 more than four years older than the victim or intended victim
1-23 [younger than 19 years of age] and the victim or intended victim was
1-24 at least 14 [~~13~~] years of age; and

1-25 (2) the conviction is based solely on the ages of the
1-26 defendant and the victim or intended victim at the time of the
1-27 offense.

1-28 SECTION 2. Section 5(g), Article 42.12, Code of Criminal
1-29 Procedure, is amended to read as follows:

1-30 (g) If a judge places on community supervision under this
1-31 section a defendant charged with an offense under Section 21.11,
1-32 22.011, 22.021, or 43.25, Penal Code, the judge shall make an
1-33 affirmative finding of fact and file a statement of that
1-34 affirmative finding with the papers in the case if the judge
1-35 determines that:

1-36 (1) at the time of the offense, the defendant was not
1-37 more than four years older than the victim or intended victim
1-38 [younger than 19 years of age] and the victim or intended victim was
1-39 at least 14 [~~13~~] years of age; and

1-40 (2) the charge to which the plea is entered under this
1-41 section is based solely on the ages of the defendant and the victim
1-42 or intended victim at the time of the offense.

1-43 SECTION 3. Article 62.301, Code of Criminal Procedure, is
1-44 amended by amending Subsections (a), (c), and (d) and adding
1-45 Subsection (a-1) to read as follows:

1-46 (a) A [If eligible under Subsection (b) or (c), a] person
1-47 required to register under this chapter may petition the court
1-48 having jurisdiction over the case for an order exempting the person
1-49 from registration under this chapter:

1-50 (1) at any time on or after the date of the person's
1-51 sentencing or [after] the date the person is placed on deferred
1-52 adjudication community supervision, as applicable, if the person is
1-53 eligible to petition the court under Subsection (b) or (c); or

1-54 (2) at any time on or after the date the person
1-55 receives a dismissal and discharge under Section 5(c), Article
1-56 42.12, if the person is eligible to petition the court under
1-57 Subsection (a-1).

1-58 (a-1) A person is eligible to petition the court as
1-59 described by Subsection (a) if the person:

1-60 (1) is required to register only a result of a single
1-61 reportable adjudication, other than an adjudication of delinquent
1-62 conduct, for an offense under Section 21.11 or 22.011, Penal Code,
1-63 if the charge for the offense is based solely on the ages of the

2-1 person and the victim or intended victim;
2-2 (2) was younger than 21 years of age at the time the
2-3 offense was committed; and
2-4 (3) before or on the date of the petition, received a
2-5 dismissal and discharge under Section 5(c), Article 42.12.

2-6 (c) A defendant who before September 1, 2009 [~~2001~~], is
2-7 convicted of or placed on deferred adjudication community
2-8 supervision for an offense under Section 21.11, 22.011, 22.021, or
2-9 43.25, Penal Code, is eligible to petition the court as described by
2-10 Subsection (a). The court may consider the petition only if the
2-11 petition states and the court finds that the defendant would have
2-12 been entitled to the entry of an affirmative finding under Article
2-13 42.017 or Section 5(g), Article 42.12, as appropriate, had the
2-14 conviction or placement on deferred adjudication community
2-15 supervision occurred after September 1, 2009 [~~2001~~].

2-16 (d) After a hearing on the petition described by Subsection
2-17 (a), the court may issue an order exempting the person from
2-18 registration under this chapter if it appears by a preponderance of
2-19 the evidence that:

2-20 (1) [as presented by a registered sex offender
2-21 treatment provider, that] the exemption does not threaten public
2-22 safety; [and]

2-23 (2) [that] the person's conduct did not occur without
2-24 the consent of the victim or intended victim as described by Section
2-25 22.011(b), Penal Code;

2-26 (3) the exemption is in the best interest of the victim
2-27 or intended victim; and

2-28 (4) the exemption is in the best interest of justice.

2-29 SECTION 4. Article 62.402, Code of Criminal Procedure, is
2-30 amended to read as follows:

2-31 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED
2-32 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall
2-33 determine the minimum required registration period under the Adam
2-34 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section
2-35 16901 et seq.) [~~14071 (Jacob Wetterling Crimes Against Children and~~
2-36 ~~Sexually Violent Offender Registration Program)] for each
2-37 reportable conviction or adjudication under this chapter, if this
2-38 state is to receive the maximum amount of federal money available to
2-39 a state as described by that law.~~

2-40 (b) After determining the minimum required registration
2-41 period for each reportable conviction or adjudication under
2-42 Subsection (a), the department [~~council~~] shall compile and publish
2-43 a list of reportable convictions or adjudications for which a
2-44 person must register under this chapter for a period that exceeds
2-45 the minimum required registration period under federal law.

2-46 (c) To the extent possible, the department [~~council~~] shall
2-47 periodically verify with the Office of Sex Offender Sentencing,
2-48 Monitoring, Apprehending, Registering, and Tracking [~~Bureau of~~
2-49 ~~Justice Assistance]~~ or another appropriate federal agency the
2-50 accuracy of the list of reportable convictions or adjudications
2-51 described by Subsection (b).

2-52 SECTION 5. The changes in law made by this Act in amending
2-53 Chapter 62, Code of Criminal Procedure, apply to any person who, on
2-54 or after the effective date of this Act, is required to register
2-55 under that chapter, regardless of whether the offense or conduct
2-56 for which the person is required to register occurs before, on, or
2-57 after the effective date of this Act.

2-58 SECTION 6. Article 42.017 and Section 5(g), Article 42.12,
2-59 Code of Criminal Procedure, as amended by this Act, apply only to a
2-60 judgment of conviction entered on or after the effective date of
2-61 this Act or a grant of deferred adjudication made on or after the
2-62 effective date of this Act.

2-63 SECTION 7. This Act takes effect September 1, 2009.

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